

GREGORY DONNELLY

BILLERICA H.O.C.

269 TREBLE COVER RD.  
BILLERICA, MA. 01862

RECEIVED  
U.S. DISTRICT COURT  
MASSACHUSETTS

JULY 1 2005

U.S. DISTRICT COURT JUDGE, RYA W. ZOBEL  
UNITED STATES DISTRICT COURT FOR MASSACHUSETTS  
1 COURTHOUSE WAY  
BOSTON, MA. 02210

JULY 5, 2005

RE: GREGORY DONNELLY V. BERNARD BRADY  
U.S.D.C. CIV. NO 04-12706 RWZ

DEAR U.S. DISTRICT COURT JUSTICE, - RYA W. ZOBEL,

YOUR HONOR, I'M WRITING YOU RESPECTFULLY ASKING THAT YOU PLEASE TAKE UNDER CONSIDERATION THE FOLLOWING APPLYING SUCH FACTS TO THIS PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS - 28 U.S.C. SEC 2254 AND PETITIONER'S OPPOSITION TO THE RESPONDENT'S MOTION TO DISMISS PETITION FILED WITH THIS HONORABLE COURT;

1) AFTER MANY YEARS OF LITIGATION IN THE MASSACHUSETTS STATE COURTS FOLLOWING DILIGENTLY THE ADVISE, DIRECTIONS, AND ORDERS OF ALL STATE COURTS AND ATTORNEY'S IN THE ABOVE MATTER TO CORRECT MY SENTENCE, THE COMMONWEALTH (MIDDLESEX ASS. DISTRICT ATTORNEY, MARQUERITE T. GRANT) HAS

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FINALLY ADMITTED DURING ORAL ARGUMENTS BEFORE THE MASSACHUSETTS APPEALS COURT ON DEC 1, 2003 THAT A "MISTAKE" HAD BEEN MADE REGARDING MY SENTENCING PLEA PROMISE, FURTHER, MARQUERITE GRANT (COMMONWEALTH) STATED TO THE MASSACHUSETT APPEAL COURT JUSTICES THAT THIS "MUTUAL MISTAKE" OR "MISUNDERSTANDING" WAS MADE BETWEEN MIDDLESEX SUPERIOR COURT JUDGE REGINA QUINN AND THE ASS. DISTRICT ATTORNEY CRISPIN BIRNBHUM (SEE NOTICE OF ORAL ARGUMENT'S EXHIBITS A AND B)

2) DURING THE ORAL ARGUMENTS IN THIS CASE ON DECEMBER 1, 2003 VISA PHONE CONFERENCE FROM MASSACHUSETTS STATE PRISON, OLD COLONY CORRECTIONAL CENTER (OCCC), MIDDLESEX DISTRICT ATTORNEY'S OFFICE, AND THE MASSACHUSETTS APPEALS COURT, . . . MASS. APP CT. JUSTICE BROWN ASKED THIS PETITIONER, "WAS THERE A PROMISE MADE REGARDING MY SENTENCE AGREEMENT, ? . . I ANSWERED "YES", MASS. APP CT. JUSTICE BROWN THEN ASKED ASS. DISTRICT ATTORNEY MARQUERITE T. GRANT, "WAS THERE A PROMISE MADE TO DONNELLY REGARDING HIS SENTENCE"? MARQUERITE GRANT (ASS. DISTRICT ATTORNEY) ANSWERED "YES", BUT THERE WAS A "MUTUAL MISTAKE OR MISUNDERSTANDING" BETWEEN THE

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SENTENCING JUDGE REGINA L. QUINLAN AND THE MASS DISTRICT ATTORNEY CRISPIN BIRNBAUM AT THE TIME OF SAID PLEA AGREEMENT." . MASS. APP. CT. JUSTICE BROWN THEN STATED "WHY DIDN'T YOU JUST CORRECT THE SENTENCE" (SEE MASS. APP. CT. 2003-P-186, EXHIBIT C, REPLY BRIEF, EXHIBIT D , AND APP CT ORDER DENYING RULE 30 MOTION TO CORRECT SENTENCE, EXHIBIT E .

3) THE MASSACHUSETTS APPEALS COURT ORDER (EXHIBIT E) WRITES; "THE COMMONWEALTH WAS NOT MISTAKEN AS TO THE APPLICABLE LAW", SENTENCING AGREEMENT. — IF THIS BE THE FACTS THEN THIS PETITIONER WAS SANDBAGGED — BAIT AND SWITCHED TO PLEAD GUILTY. THERE WAS "NO" CONFUSION AS TO THE PROMISES MADE BY THE PROSECUTOR TO THIS PETITIONER (SEE PETITIONER'S AFFIDAVIT, EXHIBIT F) OR PETITIONER'S ATTORNEY (SEE DEFENSE ATTORNEY'S AFFIDAVIT EXHIBIT G) IN EXCHANGE FOR PETITIONER'S GUILTY PLEA. THIS PLEA AGREEMENT PROMISE TOOK ALL MORNING WITH ALL PARTIES INVOLVED INCLUDING THE SENTENCING JUDGE (REGINA QUINNIN) AND THE VICTIM'S FAMILY OF

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OF THIS TRAGEDY (MOTOR VEHICLE HOMICIDE), (SEE,  
SENTENCING TRANSCRIPTS EXHIBIT H)

- 4) THIS PETITIONER FILED APPLICATION FOR FURTHER APPELLATE REVIEW WITH THE MASSACHUSETTS SUPREME JUDICIAL COURT (SEE EXHIBIT I), RECEIVING ON OCTOBER 27, 2004 THE SJC NOTICE OF DENIAL OF F.A.R. APPLICATION (SEE EXHIBIT J).
- 5) THE MASSACHUSETTS APPEALS COURT ADOPTED THE REMEDY OF "SPECIFIC PERFORMANCE" "WHEN A PLEA RESTS IN ANY SIGNIFICANT DEGREE ON A PROMISE OR AGREEMENT OF THE PROSECUTOR", SEE COMM V. PARZYCK, 41 MASS APP CT. 195 (1996), QUOTING FROM UNITED STATES V. KURKCOLEK 918 F.2ND 295, 300 (1ST CIR 1990), (SEE pgs 9-14 PETITIONER'S APPLICATION FOR F.A.R., MASS SUPREME JUDICIAL COURT EXHIBIT I.), NOTE: COMM V. PARZYCK 41 MASS APP CT. 195 (1996) CAME DOWN ONE MONTH AFTER THE MASS. APP CT. RULED ON COMM. V. DONNELLY, 41 MASS APP CT 1101 (1996), ALSO SEE PETITIONER'S

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MEMORANDUM IN SUPPORT OF PETITIONER'S APPLICATION  
FOR A WRIT OF HABEAS CORPUS . . . 28 U.S.C. SEC 2254,  
PAGES 6-9.

- 6) THIS PETITIONER HAS CLEARLY DEMONSTRATED HIS CONSTANT AND DILIGENT PURSUIT IN THE CORRECTION OF HIS SENTENCE IN THE NUMEROUS FILINGS, ATTORNEY REPRESENTATIONS/ADVISE, AND FOLLOWING ALL MASS. STATE COURTS ORDERS IN THIS CASE FROM THE ONSET OF THE BREACH OF HIS PLEA PROMISES AT SENTENCING.
- 7) PETITIONER'S UNDERSTANDING OF MASS R. CRIM. P. 30 IS THAT ALTHOUGH PETITIONER HAS FILED NUMEROUS MOTIONS/PETITION'S IN THIS MATTER TO SEEK THE PROMISES MADE TO HIM AT SENTENCING (SEE EXHIBITS F, G, & H) IN EXCHANGE FOR HIS GUILTY PLEA, MASS. R. CRIM. P. 30, PROVIDES REMEDIES FOR PERSONS WHO HAVE BEEN IMPRISONED IN VIOLATION OF STATE AND FEDERAL LAWS (SEE PETITION PAGES 9-14) AS IN THIS CASE, "THERE ARE NO TIME LIMITATIONS FOR FILING A RULE 30

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MOTION, AND AN INDIVIDUAL CAN FILE MULTIPLE RULE 30 MOTIONS" (SEE, MASS R. CRIM. P. 30), THE MASSACHUSETTS SUPREME JUDICIAL COURT HAS HELD THAT A RULE 30 MOTION IS THE "EXCLUSIVE VEHICLE FOR POSTCONVICTION RELIEF" IN MASSACHUSETTS.

LEASTER V. COMM. 432 N.E. 2ND 708 (MASS 1982). (RODRIGUEZ V. SPENCER, U.S. COURT OF APPEALS, NO. 03-2139

8) ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (A.E.D.P.H.) ALLOWS ONE YEAR FROM THE DATE OF THE DENIAL OF YOUR "DIRECT APPEAL" TO FILE A FEDERAL HABE. AT FIRST GLANCE THAT WOULD SEEM TO PREVENT PETITIONER FROM USING A HABE., HOWEVER, PETITIONER "NEVER" HAD A DIRECT APPEAL IN THE FIRST PLACE, FURTHER, ON OCTOBER 27, 2004 THE S.J.C. OF MASSACHUSETTS DENIED THE DUE PROCESS CLAIM (SEE EXHIBITS I-J) WHICH WAS THE ONLY TIME DURING THE YEARS OF DILIGENT LITIGATION IN THIS CASE PETITIONER'S ISSUE WAS ADDRESSED BY THE STATE COURT, HENCE, THAT IS THE DATE

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PETITIONER'S DIRECT APPEAL/APPEAL BREACH OCCURRED. (SEE. EXHIBITS I AND J PAGES 9-14, AND PAGES 14-18.

### CONCLUSION

WHEREFORE: THIS HONORABLE COURT SHOULD DENY RESPONDENTS MOTION TO DISMISS PETITIONER'S WRIT FOR HABEAS CORPUS PURSUANT TO 28 U.S.C. SEC 2254 AND GRANT DONNELLY'S PETITION FOR WRIT OF HABEAS CORPUS, ORDERING SPECIFIC ENFORCEMENT TO THE TERMS OF SENTENCING PROMISE (EXHIBITS F, G, H) AND SEE PETITION PAGES 14-18)

DATED July 5, 2005

RESPECTFULLY SUBMITTED

Gregory Donnelly  
GREGORY DONNELLY, Pro Se.  
269 TREBLE COVE RD  
Billerica, MASS. 01862

CERTIFICATE OF SERVICE

I, GREGORY DONNELLY, DO HEREBY  
CERTIFY THAT I HAVE SERVED A COPY OF  
THE ABOVE PLEADING ON THE ATTORNEY FOR  
THE RESPONDENT, BY MAILING SAID FIRST CLASS  
POSTAGE PAID ADDRESSED,

RANDALL RAVITZ  
ASS ATTORNEY GENERAL  
CRIMINAL BUREAU  
ONE ASHBURTON PLACE  
BOSTON, MA. 02108

DATED JULY 5, 2005

Gregory Donnelly  
GREGORY DONNELLY, PRO SE.